

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD KELLY,

Misc. Case No. 22-51563

Petitioner,

Honorable Laurie J. Michelson

v.

UNITED STATES OF AMERICA,

Respondent.

GOVERNMENT'S RESPONSE TO DEFENDANT'S
PETITION TO UNSEAL

Petitioner Bernard Kelly filed a petition with this court to unseal court ordered phone records from approximately 18 years ago. The requested records are no longer available and were likely destroyed.

On October 8, 2004, a federal criminal complaint was issued alleging a violation of 18 U.S.C. § 1073, Unlawful Flight to Avoid Apprehension (Case No. 04-80834). The compliant was issued after the Wayne County Michigan Prosecutor Kym Worthy requested the assistance of the Federal Bureau of Investigation (FBI) to locate and apprehend Petitioner. Petitioner was wanted for the murder of two adult females and the brutal beating of a 3-year-old child who was fatally wounded. Efforts by the Detroit Police Department (DPD) to locate Petitioner, who had been missing from

his home since September 28, 2004, were unsuccessful. Detroit Police developed information that Petitioner may have traveled to Virginia based on cellular telephone records obtained on October 8, 2004. On October 14, 2004, Magistrate Judge Mona Majzoub issued an Order authorizing the installation and use of a pen register and the use of a trap and trace device on a cellular telephone subscribed to by Petitioner. (ECF No. 1, PageID. 5-11). Petitioner was apprehended and placed in local custody, and the federal criminal complaint was dismissed on March 8, 2005.

On October 14, 2022, Petitioner filed a Petition to Unseal Previous Order seeking access to any phone records that were obtained by the FBI pursuant to the October 14, 2004, Order. (ECF No. 1, PageID.1). The Government was ordered to respond. (ECF No. 5, PageID.34).

Undersigned counsel searched the original United States Attorney's Office (USAO) criminal case file, consulted USAO records staff, and communicated with the FBI. Efforts to locate any phone records have been unsuccessful. Moreover, undersigned counsel has been advised that pen register and trap and trace records are

ordinarily destroyed after 10 years. Given the age of the case, it is likely the records have been destroyed.

Respectfully submitted,

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